

Policy ~~3160~~ 545 – Physical / Mental Examination

Revised policy and repeal of Policy 4160 (Physical / Mental Examination), Policy 4160.02 (Physical Examination for School Bus Operators), and Policy 4162 (Drug and Alcohol Testing of CDL License Holders) effective July 1, 2019

1st reading May 23, 2019

2nd reading

3rd reading

Statutory authority West Virginia Code 18A-2-10, West Virginia Board of Education Policy 4336

Administrative Guidelines

(none)

The Board of Education or Superintendent reserves the right to require, after a conditional offer of employment, that the successful candidate submit to an examination in order to determine the physical and/or mental capacity to perform the essential functions of the position with or without reasonable accommodation, provided that the Board requires other successful candidates for the same position (or job classification) to do so. The Board also reserves the right to require employees to submit to such examinations. Such examinations shall be done in accordance with the Superintendent's guidelines.

Employees will be required to execute a release that complies with the requirements of the Health Insurance Portability and Accountability Act in order to allow the report of the medical examination to be released to the Board/Superintendent and to allow the Superintendent or his/her designee to speak to the health care provider who conducted the medical examination in order to get clarification (see Form 3160 F2).

Such report should include a comprehensive report of the medical examination.

In compliance with the Genetic Information Nondiscrimination Act (GINA) and Board Policy 3122.02, the successful candidate who is required to submit to a medical examination, as well as the health care provider that is designated by the Board to conduct the examination, are directed not to collect genetic information or provide any genetic information, including the candidate's family medical history, in the report of the medical examination.

Employees will be notified of the results of the medical examination upon receipt. Any and all reports of such examination will be maintained in a separate confidential personnel file in accordance with the Americans with Disabilities Act, as amended ("ADA") and the Genetic Information Nondiscrimination Act (GINA).

In the event of a report indicating that the candidates is not qualified to perform the position's essential functions, with or without reasonable accommodation, the Superintendent, upon a conference with a physician and substantiation that the condition will not allow the employee to fulfill the essential functions of the job, will make a recommendation to the Board of non-employment.

The Board shall assume any costs for required examinations.

~~WV Code 16-3D-3~~

~~West Virginia Code 18A-2-10~~

~~42 U.S.C. 12101 et seq. Americans with Disabilities Act of 1990, as amended~~

~~42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act~~

~~29 C.F.R. Part 1630~~

~~29 C.F.R. Part 1635~~

Physical / Mental Examination

~~The Board or Superintendent reserves the right to require, after a conditional offer of employment, that the successful candidate submit to a medical examination in order to determine his/her physical and/or mental capacity to perform the essential functions of the position, with or without reasonable accommodation, provided that the Board has required previous successful candidates for the same position (or job classification) to do so. The Board also reserves the right to require employees to submit to such examination. Such examinations shall be done in accordance with the Superintendent's guidelines.~~

~~Employees will be required to execute a release that complies with the requirements of the Health Insurance Portability and Accountability Act in order to allow the report of the medical examination to be released to the Board/Superintendent and to allow the Superintendent or his/her designee to speak to the health care provider who conducted the medical examination in order to get clarification (see Form 4160 F2).~~

~~Such report should include a comprehensive report of the medical examination.~~

~~In compliance with the Genetic Information Nondiscrimination Act (GINA) and Board Policy 4122.02 the successful candidate who is required to submit to a medical examination, as well as the health care provider that is designated by the Board to conduct the examination, are directed not to collect genetic information or provide any genetic information, including the candidate's family medical history, in the report of the medical examination.~~

~~Employees will be notified of the results of the medical examination upon receipt. Any and all reports of such examination will be maintained in a separate confidential personnel file in accordance with the Americans with Disabilities Act, as amended ("ADA") and the Genetic Information Nondiscrimination Act (GINA).~~

~~In the event of a report indicating that the candidate is not qualified to perform the position's essential functions, with or without reasonable accommodation, the Superintendent, upon a conference with a physician and substantiation that the condition will not allow the employee to fulfill the essential functions of the job, will make a recommendation to the Board of non-employment.~~

~~The Board shall assume any uninsured fees for required examinations.~~

~~WV Code 16-3D-3~~

~~WV Code 18A-2-10~~

~~42 U.S.C. 12101 et seq. Americans with Disabilities Act of 1990, as amended~~

~~42 U.S.C. 2000ff et seq. The Genetic Information Nondiscrimination Act~~

~~29 C.F.R. Part 1630~~

~~29 C.F.R. Part 1635~~

Physical Examination for School Bus Operators

~~The school bus operator shall pass a physical examination from a Medical Examiner as specified by West Virginia State Board of Education Policy 4336. This examination shall be conducted no earlier than the April 1st receive certification for the following school term.~~

The Superintendent has the right to require a physical and/or psychological examination from a designated health care provider when s/he has any reasonable questions regarding the physical ability of a school bus operator and the safety of students or the sufficiency of an annual physical examination.

The original report of the physical examination of all school bus operators, except for designated Head Start bus operators, is to be sent to the Superintendent. The original of the physical examination of designated Head Start school bus operators is to be sent to the State Director. A copy shall also be filed in the Head Start personnel office.

Physical examinations shall be recorded on the State Department Medical Examination Report form by a Medical Examiner.

The physical examination for all school bus operators shall ensure that:

- A. — There is not past or present history of convulsive seizures.
- B. — There is no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control unless the West Virginia Department of Transportation provides an interstate waiver.
- C. — There is no loss of use of joints of either hand that interferes with prehension or power grasping such that the applicant cannot receive or would not be able to renew a CDL with appropriate endorsements.
- D. — Hearing loss in the better ear of the school bus operator shall not be greater than forty (40) decibels at 500 Hz, 1000 Hz and 2000 Hz. When needed, an approved hearing aid with back up batteries shall be used by the school bus operator.

E. — There is no current clinical diagnosis of:

- 1. — myocardial infarction
- 2. — angina pectoris
- 3. — coronary insufficiency
- 4. — thrombosis

There is no cardiovascular disease of a variety that is accompanied by:

- 1. — syncope
- 2. — dyspnea
- 3. — collapse
- 4. — congestive cardiac failure

Blood pressure is less than 140 systolic and ninety (90) diastolic or current CDL requirements. If blood pressure equals or exceeds 140/90, the bus operator/applicant shall meet the requirements outlined in FMSCA regulation 49 C.F.R. 391.41 (Physical Qualifications for Drivers.) If the employee fails the initial blood pressure test, the employee shall provide medical evidence of three (3) separate blood pressure readings below the above levels on three (3) difference days within a seven (7) day period prior to certification. These readings shall be certified by a Medical Examiner.

When a school bus operator is required to use a pacemaker, his/her return to work shall be approved by a panel of three (3) cardiologists.

- F. — While performing school bus operator duties, the school bus operator shall wear a truss for any small hernia. Large hernias shall be surgically repaired.
- G. — There is no medical history or clinical diagnosis of the following which interferes with the ability to operate a bus safely.
 - 1. — rheumatic disease
 - 2. — arthritic disease
 - 3. — muscular disease

4. — neuromuscular disease
 5. — vascular disease
- H. — There is satisfactory passage of a tuberculin skin test, chest x-ray or physician's certification, prior to employment, and/or more frequently if medically indicated (see W.Va. Code 16-3D-43c)
- I. — Both eyes are functional and the school bus operator:
1. — has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses;
 2. — does not have monocular vision;
 3. — has a field of vision no less than seventy (70) degrees in the horizontal meridian of each eye;
 4. — is able to identify the colors, red, green, amber, and blue
 5. — wears corrective lenses, if necessary, while operating a bus.
- J. — The school bus operator shall have no mental, nervous, organic or functional disease or psychiatric disorder and take no medication likely to interfere with his/her ability to operate the bus safely. See Appendix I of WV Board of Education policy 4336. (Prescription and Over the Counter Medication) as examples of drugs that may interfere with that ability. Any questions regarding this matter will be decided by the State school transportation certification advisory board. If the school transportation certification advisory board determines a bus driver to have a condition described above, the bus driver may be required to furnish the advisory board with a complete medical report. After receiving the medical report, the advisory board considers the information and advises the State Superintendent as to whether the bus driver should be certified. The final decision will rest with the State Superintendent.
- K. — All school bus operators shall be subject to preemployment, random, post accident, and reasonable suspicion drug testing for the use of certain controlled substances and alcohol as per all regulations of the U.S. Department of Transportation, Federal Highway Administration of the Omnibus Transportation Employment Testing Act (OTETA.) The County Board of Education shall provide the State Department, by certified mail, the name and Social Security number of employees who hold safety sensitive positions as described by the OTETA, and who test positive for the tested substances. The State Department shall maintain the positive test records for two (2) years.
- L. — The school bus operator shall notify their supervisor and/or Medical Examiner of any illness or the use of any controlled and/or over the counter substance that may interfere with the safe operation of school bus. See Appendix F of WV Board of Education policy 4336 (Prescription and Over the Counter Medication) as examples of drugs that may interfere with that ability.
- M. — The "Medical Examiner" has PRINTED his/her name in the designated area as well as providing his/her signature on the physical form.

The Board shall provide the State West Virginia Department of Education, by certified mail, the name and Social Security number of any school bus operator who fails to meet the physical and mental/emotional requirements above.

~~West Virginia State Board of Education Policy 4336~~
~~WV Code 16-3D-3(c)~~

Drug and Alcohol Testing for CDL License Holders

The Board of Education believes that the safety of students while being transported to and from school or school activities is of utmost importance and is the primary responsibility of the driver of the school vehicle. To fulfill such a responsibility, each driver, as well as others who perform safety-sensitive functions with Board-owned and/or operated ("Board-owned") vehicles must be mentally and physically alert at all times while on duty. In addition, the Board recognizes that a drug-free and alcohol-free school and work environment is vital to workplace and school safety and to the quality of the County's educational services.

To that end, the Board has established this policy and others related to employees' health and well-being.

The Board expects all drivers to comply with ~~Board Policy 4122-01 502 on Drug-Free Workplace~~ which prohibits the possession, use, sale, or distribution of alcohol and any controlled substance on school property at all times.

Further, the Board concurs with the Federal requirement that all drivers should be free of any influence of alcohol or controlled substance while on duty. Therefore, participation in the alcohol and controlled substances testing program is a condition of employment for all drivers.

Covered Employees

This policy covers all commercial driver's license (CDL) holders and regular and substitute bus drivers who operate a commercial motor vehicle while on duty, as well as other service employees who may drive students in County vehicles or inspect, service, and condition County vehicles.

Definitions

For purposes of this policy and the guidelines associated with the policy, the following definitions shall apply.

- A. The term alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol. This term is a volume breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test as described herein.
- B. The term controlled substance includes, the possession or use of which is unlawful pursuant to Federal, State and local laws and regulations, and any drug that is being used illegally, such as a prescription drug that was not legally obtained or not used for its intended purposes or in its prescribed quantity. The term does not include any legally-obtained prescription drug used for its intended purpose in its prescribed quantity unless such use would impair the individual's ability to safely perform safety-sensitive functions. This term includes, but is not limited to, marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, phencyclidine (PCP).
- C. The term controlled substance abuse includes excessive use of alcohol as well as prescribed drugs not being used for prescribed purposes, in a prescribed manner, or in the prescribed quantity.
- D. The term safety-sensitive functions includes waiting to be dispatched, inspecting equipment, servicing, driving, loading or unloading County vehicles, as well as repairing, obtaining assistance, or remaining in attendance upon a disabled County vehicle. This term further includes any period in which an individual is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
- E. The term Driver means all CDL holders and regular and substitute bus drivers who operate a commercial motor vehicle while on duty, as well as other service employees who may drive students in County vehicles or inspect, repair, and maintain Board-owned vehicles.
- F. The term while on duty means all time from the time the CDL license holder begins to work or is required to be in readiness for work until the time s/he is relieved from work and all responsibility for performing work.

The Board will not tolerate the possession, use, sale, or distribution of alcohol and/or any controlled substance or drug other than those approved for administration by the appropriate school personnel on school property, at any time. All CDL license holders must comply strictly with this policy. Further, the Board concurs with the Federal requirement that all CDL license holders should be free of any influence of alcohol or controlled substance while on duty.

The Superintendent shall establish a drug and alcohol testing program whereby each driver is tested for the presence of alcohol in his/her system as well as for the presence of the following controlled substances:

- A. Marijuana
- B. Cocaine
- C. Opiates
- D. Amphetamines
- E. Phencyclidine (PCP)

The drug tests are to be conducted in accordance with Federal and State regulations a.) prior to employment, b.) for reasonable cause, c.) upon return to duty after any alcohol or drug rehabilitation, d.) after any accident, e.) on a random basis, and f.) on a follow-up basis.

Candidates shall also be tested for the presence of alcohol in their system prior to employment.

Any CDL license holder who tests positive shall be prohibited from performing or continuing to perform his/her safety-sensitive functions (e.g., driving any Board-owned vehicle) and be referred to the County's Employee Assistance Program.

It shall be the responsibility of any employee to report to the appropriate law enforcement office information received concerning a person who:

- A. sells, gives away, distributes or markets any substance or product in this State or transports such a substance or product into this State with the intent that the substance or product will be used to defeat a drug or alcohol screening test;
- B. attempts to defeat a drug or alcohol screening test by the substitution of a false sample;
- C. advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;
- D. adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;
- E. possess adulterants for the purpose of defeating a drug or alcohol screening test; or
- F. sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

Furthermore, if during any test the lab determines that an adulterant has been added to the specimen, then the test will be considered positive and the employee shall be prohibited from driving any school vehicle and be referred to the County's Employee Assistance Program.

Any ~~service~~ employee who refuses to submit to a test shall be prohibited from performing or continuing to perform his/her safety-sensitive functions (e.g., driving any Board-owned vehicle) and shall be considered to have abandoned his/her job.

~~Service~~ Employees who voluntarily disclose that they have an addiction to alcohol or controlled substances may participate in the Employee Assistance Program, and may qualify for the receipt of medical insurance benefits for treatment of alcohol or substance abuse, including follow-up care, to the extent that such service employee is covered by any health insurance policy which provides for such benefits, made available by the Board. Voluntary disclosure of an alcohol or drug addiction by a service employee will not subject the service employee to disciplinary action unless such disclosure is made after the service employee is selected to be tested or immediately prior to the selection of service employees to be tested. Nothing herein shall prevent the Board from disciplining a service employee for misconduct associated with his/her alcohol and/or drug use regardless of whether the employee has disclosed that s/he has an

alcohol or drug addiction.

An ~~service~~ employee will be subject to disciplinary action, up to and including termination, for any of the following reasons:

- A. reports for duty or performs work while under the influence of alcohol or any controlled substance or drug prohibited herein
- B. reports for duty or performs work while testing positive for using a prohibited drug, whether or not the employee can be said to be under the influence of the prohibited substance
- C. refuses to submit to drug and/or alcohol testing
- D. alters or attempts to alter or unduly influence alcohol and/or drug testing results
- E. fails to remain readily available for post-accident testing (including notifying his/her supervisor of his/her location, if the service employee leaves the scene of the accident prior to the submission of a post-accident test, unless the service employee's departure is to obtain necessary emergency medical care)

Prior to the beginning of the testing program, the Board shall provide a drug-free awareness program which will inform each CDL license holder about:

- A. the dangers of illegal drug use and controlled substance and alcohol abuse;
- B. Employee Assistance Program;
- C. the sanctions that may be imposed for violations of this policy.

All time spent undergoing an alcohol or controlled substance test, including travel time, will be paid at the service employee's regular rate of pay, or at his/her overtime rate, if applicable. Any service employee who is not allowed to return to work while awaiting test results will be compensated during the waiting period for all work time lost, including overtime, if applicable. The Board shall pay all costs associated with the administration of alcohol and controlled substance tests. This includes testing of the "split specimen" at a Federally certified laboratory if so requested by a service employee. The Board will not pay for the employee's time while not on duty, if the split specimen test results are positive.

Alcohol and drug test results shall be protected as confidential medical records as appropriate (i.e. test results shall be provided on a right to know basis – the employee, the employer, and the substance abuse professional – and the results shall not be presented until analyzed by and reported on by one competent to understand and interpret the test results).

A tested individual, upon written request, will have access to any records relating to his/her use of drugs and alcohol, including any records pertaining to his/her drug and alcohol tests. A tested individual must provide written authorization before his/her test result can be provided to any other person except a government agency specified in the applicable Federal regulations.

All tests shall be conducted in accordance with Federal testing guidelines and be performed by a laboratory that is Federally certified (i.e. testing procedures and devices used will be as set forth in 49 C.F.R. Part 40).

The alcohol and drug testing program shall be under the direction of the Superintendent or designee.

The Superintendent shall arrange for the required amount of training for appropriate service employee in drug

recognition, in the procedures for testing, and in the proper assistance of service employees who are subject to the effects of substance abuse.

The Superintendent shall submit, for Board approval, a contract with a certified laboratory to provide the following services:

- A. testing of all first and second test urine samples
- B. clear and consistent communication with the person or entity performing the testing and/or interpreting the results
- C. methodology and procedures for conducting random test for controlled substances and alcohol
- D. preparation and submission of all required reports to the Board of Education, and to Federal and State governments as required

The Superintendent shall also select the agency or persons who will conduct the alcohol breathalyzer test and the drug collection site(s) in accordance with the requirements of the law.

Educational materials explaining the requirements of the Federal regulations and of the Board's policies and procedures to meet the Federal regulations shall be provided to all service employees, including the following:

- A. the name of the person designated by the Board to answer questions about the materials
- B. information sufficient to make clear to employees the period of the work day during which they are required to comply with the regulations
- C. information concerning what conduct is prohibited
- D. the circumstances under which employees are subject to testing
- E. the procedures for testing in order to protect the employee and the integrity of the testing process, to safeguard the validity of the test results, and to confirm the results are attributed to the correct employee
- F. the requirement that service employees must submit to testing as required by the regulations
- G. an explanation of what constitutes a refusal to be tested and the attendant consequences
- H. the consequences of testing positive, including the requirements of immediate removal from safety-sensitive functions, and the procedures regarding referral, evaluation, and treatment
- I. information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected (including confrontation and how to refer someone to an Employee Assistance Program or to management)

These materials are to be distributed to each ~~service~~ employee upon being hired or transferred into a covered position thereafter. Each ~~service~~ employee must sign a statement certifying receipt of these materials. Each employee (and organization representing Board employees) shall receive written notice of the availability of this information, and the identity of the Board's designated representative in charge of answering employee questions about the materials.

~~West Virginia State Board of Education policy 4336~~

~~WV Code 60A-4-412(a)~~

~~49 C.F.R. 382.101 et seq.~~